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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,355	12/21/2001	Jerome Peyrelevade	05725.1008-00	4653

22852 7590 07/14/2005

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EXAMINER	
ZURITA, JAMES H	

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/024,355	PEYRELEVADE ET AL.	
	Examiner	Art Unit	
	James H. Zurita	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 May 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-72* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2 and 18-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *3-17 and 21-72* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 December 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *24 April 2003*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Invention I.a (claims 1, 2, 18-20), in the reply filed on 2 May April 2005 is acknowledged. The traversal includes:

> ...claim Groupings lack the combination and sub-combination relationships alleged in the Office Action.
>
> ...there would be no serious burden if all of the claims would be examined together...
>
> ...limited species designation in the Office Action are clearly improper because they do not provide applicants with the opportunity to elect such combination species...

This is not found persuasive for reasons enumerated in the original Restriction Requirement. The Examiner also notes that elected Invention I.a appears to correlate to species embodiment shown as Fig. 18 of applicant's disclosures.

The requirement is still deemed proper and is therefore made FINAL.

Priority

This application claims benefit to a provisional applications 60/325561 and 60/325559.

The Examiner requests the Applicant identify where in the prior applications the features of the present invention are first disclosed. Since the provisional applications also list different inventors than the present application (and with different inventors), the examiner also requests the Applicant identify which inventor(s) contributed which features claimed in the present application that were also present in one or more prior application with different inventors.

Provisional application 60/325561 contains materials in a language other than English. Applications that claim benefit of a provisional application filed in a non-English language must include an English translation of the non-English language provisional application and a statement that the translation is accurate unless the translation and the statement were previously filed in the provisional application. See 37 CFR 1.78(a)(5). The English translation and a statement that the translation is accurate as required by 37 CFR 1.78(a)(5) is missing. Applicant must supply the missing English translation and a statement that the translation is accurate in the reply to this Office action prior to the expiration of the time period set in this Office action.

Note on 35 USC § 101

Applicant defines ***simulating*** in paragraph 100, page 30, in several ways. For purposes of this examination, the Examiner will use applicant's more restrictive definition of ***simulating*** as requiring use of image processing techniques and computer technology in the various steps, thereby avoiding a rejection under 35 USC 101.

Claim Rejections - 35 USC § 102

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Voticky et al. (US 6801216).

As per claim 1, Voticky discloses selecting beauty products, including:

- accessing a facial image. See, for example, references to various picture images, as in Fig. 9 and related text.
- receiving from the user a selection of at least one beauty product for simulated application to the facial image. See, for example, at least Fig. 10 and related text, concerning selection references 222 and 224.
- simulating the at least one selected beauty product on the facial image. See, for example, at least Fig. 9 and references to overlays, as in an "After picture."
- determining a recommended beauty product based at least in part on the at least one selected product. See, for example, at least Col. 11, lines 26-53, concerning product suggestions and recommendations.
- simulating the at least one recommended beauty product on the facial image. See, for example, at least Fig. 9, overlay images, "after picture".

As per claim 2, Voticky discloses causing the facial image to be displayed to the user. See, for example, at least Fig. 9 and related text.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voticky in view of Orpaz (US PG-PUB 2002/0071604).

Voticky discloses claims 1 and 2, as described above and the reiterative nature of overlays of various products according to recommendations.

As per claim 18, Voticky discloses saving multiple facial images, and causing multiple facial images to be displayed simultaneously to a user, as in Figs. 8 and 9 and related text, where multiple facial images are displayed simultaneously. Voticky ***does not*** specifically disclose causing a second recommended product to appear on an additional facial image. This feature is disclosed by Orpaz, which discloses as in Fig. 4, which saves and displays multiple looks simultaneously. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Voticky and Orpaz to disclose causing a second recommended product to appear on the additional facial image. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Voticky and Orpaz to disclose causing a second recommended product to appear on the additional facial image for the obvious reason that a user may wish to compare looks to see which combination of products appears to her at various times in her life.

As per claim 19, Voticky discloses that multiple facial images are displayed simultaneously, as in Figs. 8 and 9 and related text, where multiple facial images are displayed simultaneously.

As per claim 20, Voticky ***does not*** specifically disclose that each facial image has a differing combination of beauty products simulated thereon. This feature is disclosed by Orpaz, which discloses as in Fig. 4, which saves and displays multiple looks simultaneously. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Voticky and Orpaz to disclose causing a second recommended product to appear on the additional facial image. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Voticky and Orpaz to disclose causing a second recommended product to appear on the additional facial image for the obvious reason that a user may wish to compare looks to see which combination of products appears to her at various times in her life.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Zurita whose telephone number is 571-272-6766. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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7 July 2005